

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION

Employer

and

Case 03-RC-292127

WORKERS UNITED

Petitioner

ORDER TO SUBMIT OFFER OF PROOF

On March 14, 2022,¹ Workers United (Petitioner) filed a petition pursuant to Section 9(c) of the National Labor Relations Act seeking to represent a unit of baristas, shift supervisors, and assistant store managers working at the Starbucks Corporation (Employer)'s store located at 5395-5495 Sheridan Drive in Amherst, New York.²

On March 24, in accordance with the Board's Rules and Regulations, the Employer filed a Statement of Position (SOP) in this matter, stating the Employer intends to present evidence urging the Region to find that the petitioned-for unit in this case is inappropriate and instead direct a multi-location election to include all baristas and shift supervisors working in the 20 Starbucks stores in the greater Buffalo, New York area. The Employer states in its SOP the single-facility bargaining unit sought by the Petitioner is not appropriate because: (1) the only appropriate unit is a "market-wide unit" consisting of all 20 stores owned and operated by the Employer in the Buffalo, New York area; (2) the Petitioner's selective filing of a single store representation petition violates Section 9(c)(5) of the Act; and (3) the inclusion of Assistant Store Managers in the petitioned-for unit is inappropriate because these individuals are supervisors within the meaning of Section 2(11) of the Act.

The Regional Director's authority to determine the issues in dispute at the hearing is set forth in Section 102.66(c) of the Board's Rules and Regulations, as follows:

Offers of proof. The Regional Director shall direct the Hearing Officer concerning the issues to be litigated at the hearing. The Hearing Officer may solicit offers of proof from the parties or their counsel as to any or all such issues. Offers of proof shall take the form of a written statement or an oral statement on the record identifying each witness the party would call to testify concerning the issue and summarizing each witness's testimony. If the Regional Director determines that the

¹ All dates herein are in 2022 unless otherwise stated.

² This store is colloquially referred to as "the Williamsville Place store" given its location within the shopping plaza of the same name. References to "the Williamsville Place store" in this Order should be taken to mean this facility.

evidence described in an offer of proof is insufficient to sustain the proponent's position, the evidence shall not be received. But in no event shall a party be precluded from introducing relevant evidence otherwise consistent with this subpart.

See also Casehandling Manual, Part Two, Representation Proceedings, § 11226 (September 2020), (providing for the use of offers of proof “to focus and define issues and provide a foundation to accept or exclude evidence”).

The parties to this matter have already litigated whether single-store facilities in the Buffalo market are appropriate. In cases 03-RC-282115, 03-RC-282127, and 03-RC-282139 (*Buffalo I*), the Region conducted a six-day hearing and issued a lengthy decision determining that the petitioned-for units were appropriate and that Starbucks had not successfully rebutted the single-facility presumption. This conclusion was subsequently upheld by the Board in an unpublished decision denying the Employer’s request for review.³ The Petitioner was subsequently certified as the exclusive collective-bargaining representative of the petitioned-for units in cases 03-RC-282115 and 03-RC-282139.

During the pendency of the above matter, the Region held a second hearing, in cases 03-RC-285929, 03-RC-282986, and 03-RC-282989 (*Buffalo II*), which also involved contentions by the Employer that the petitioned-for units at three additional stores in the Buffalo market were inappropriate. During this two-day hearing, the Employer presented evidence regarding alleged changed circumstances, including the assignment of a new District Manager to some of the stores in question and the removal of recruitment and hiring functions from Store Managers. Notwithstanding this additional evidence, the Regional Director concluded that single store facilities remained appropriate and directed elections in the petitioned-for single-store units. This conclusion was recently upheld by the Board.⁴ The Petitioner was subsequently certified as the exclusive collective-bargaining representative of the petitioned-for units in cases 03-RC-285986 and 03-RC-285989.

Additionally, the Board recently denied the Employer’s request for review on the issue of a single versus multi-store unit involving a store and district in Mesa, Arizona. See *Starbucks Corporation*, 371 NLRB No. 71 (2022) (*Mesa I*). In that case, the Board upheld the Regional Director’s decision in Case 28–RC–286556 that the Employer did not meet its heavy burden to overcome the presumption that the petitioned-for single store unit was appropriate. The Board specifically concluded that, with respect to employee interchange, the statistics provided by the Employer did not establish regularity or frequency of interchange and thus did not favor a conclusion that the petitioned-for unit was inappropriate. With respect to centralized operations and local autonomy, the Board concluded that the Employer failed to meet its burden that its technologies and corporate leadership negated the store managers’ autonomy over certain personnel matters in the day-to-day operation of individual stores. The Board also concluded that the Employer failed to meet its burden that remaining factors under the Board’s single-facility test, including similarity of employee skills, functions, working conditions, geographic proximity, and

³ *Starbucks Corporation*, 03-RC-282115 (unpublished order December 8, 2021).

⁴ *Starbucks Corporation*, 03-RC-285929 (unpublished order dated March 7, 2022).

bargaining history, were sufficient to rebut the single-facility presumption in the context of the Board's multi-factor analysis.

Based on the above,

IT IS ORDERED that the Employer submit an Offer of Proof, in writing, detailing on what basis it asserts that the only appropriate unit is one encompassing all stores in the Buffalo market. Specifically, this Order of Proof should address how the Employer's proposed unit is appropriate given that such a unit would necessarily include employees employed in the recently certified bargaining units in cases 03-RC-282115, 03-RC-282139, 03-RC-285986, and 03-RC-285989.

IT IS FURTHER ORDERED that the Employer submit an Offer of Proof, in writing, detailing what *distinct and different* facts and evidence from that presented in *Buffalo I*; *Buffalo II*; and *Mesa I* that the Employer intends to present regarding the single vs. multi-facility unit issue, including by answering the following questions:

1. Is the Employer's evidence regarding the control exercised by its newly hired District Manager substantially different than the evidence presented by the Employer during the hearing held in *Buffalo II*? If so, describe the specific evidence the Employer plans to present and how it differs from the record evidence in the *Buffalo II* hearing.
2. Is the Employer's evidence regarding the hiring and recruitment duties of Store Managers substantially different than the evidence presented by the Employer during the hearing held in *Buffalo II*? If so, describe the specific evidence the Employer plans to present and how it differs from the record evidence in the *Buffalo II* hearing.
3. Is the Employer's evidence concerning the discretion exercised by Store Managers, with respect to discipline, discharge, scheduling, evaluations, or promotions substantially different than the evidence presented by the Employer during the hearings held in *Buffalo I*, *Buffalo II*, and *Mesa I*? If so, describe the specific evidence the Employer plans to present and how it differs from the record evidence submitted in the *Buffalo I*, *Buffalo II*, and *Mesa I* hearings.
4. Will the Employer's method of analyzing interchange data in this case differ from the that presented in *Buffalo II*, wherein the Employer utilized an expert witness to present certain summaries and graphic representations of interchange, such as the percentages of employees who have worked in a single store as compared to those who worked in multiple stores; average percentages of total workdays where borrowed employees were required; and percentages of home store employees working at the petitioned-for store as compared to those assigned to other home stores? If the analyses and methodology will differ from that presented in *Buffalo II*, provide a detailed explanation as to how these analyses and methodology will differ from that presented in *Buffalo II*.
5. In *Mesa I*, the Board concluded that that the Employer's analyses of the data in that case did not show how often the petitioned-for employees worked at other locations and how

often “borrowed” employees worked at the petitioned-for location. Accordingly, with respect to the issue of interchange, and given the burden to rebut a single store presumption, please provide the following information since April 2019 with respect to baristas and shift supervisors:

- a. The percentage of total hours worked at the Williamsville Place store by borrowed employees whose assigned home stores are at other stores in the Buffalo market.
 - b. The percentage of total shifts worked at Williamsville Place store by borrowed employees whose assigned home stores are at other stores in the Buffalo market.
 - c. The percentage of total hours worked at other stores in the Buffalo market by borrowed employees whose assigned home store is the Williamsville Place store.
 - d. The percentage of total shifts worked at other stores in the Buffalo market by borrowed employees whose assigned home store is Williamsville Place store.
6. With regard to the percentages provided by the Employer in response to 5 above, what evidence does the Employer intend to present that any of the borrowed hours and shifts worked were not voluntary?
 7. To what extent, if any, do the procedures to arrange, request, and accept shift swaps between stores differ from the procedures described in the evidence presented in the case numbers cited above? Please describe the specific evidence regarding how the evidence is distinct and different.
 8. Please explain the relevance of the Petitioner’s alleged bargaining proposal referenced in your Statement of Position, including specific details about why a proposal at a different facility has bearing on the Board’s determination of the appropriateness of the petitioned-for single-store unit.

IT IS ORDERED that the Employer’s Offer of Proof be submitted, in writing, no later than **12:00 p.m. on Thursday, March 31, 2022**.

IT IS FURTHER ORDERED that the Employer and the Petitioner submit a written statement detailing which portions of the records in *Buffalo I* and *Buffalo II*, or particular records in any other cases, are relevant to this case, and explaining their relevance.

Starbucks Corporation
03-RC-292127

Please cite to specific exhibits, witness testimony and transcript pages, no later than **12:00 p.m. on Thursday, March 31, 2022.**

Dated: March 29, 2022

/s/LINDA M. LESLIE

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